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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,090	08/21/2003	Robert B. Eveleigh	1811-0021 DIV	7396

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MAGINOT, MOORE & BECK
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INDIANAPOLIS, IN 46204

EXAMINER

HOOK, JAMES F

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,090

Applicant(s)

EVELEIGH, ROBERT B.

Examiner

James F. Hook

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8-22-03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 28-31 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 28-31 of copending Application No. 10/695,076. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28, 30, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Palm. The patent to Palm discloses the a baffle for mixing where the use of such in a mixing dome housing is merely intended use, comprising a leading downstream edge seen in figure 7 having an edge tapering into the housing 4, an upstream edge wider than the downstream edge, and an arcuate portion connecting the upstream and

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downstream edges, where the baffle can be seen to have a surface area that is about one half the cross sectional area of the housing, and can be seen to have a paisley shape.

Claim 28 is rejected under 35 U.S.C. 102(b) as being anticipated by Holzhuter. The patent to Holzhuter discloses the a baffle for mixing where the use of such in a mixing dome housing is merely intended use, comprising a leading downstream edge seen in figure 1 having an edge tapering into the housing on the downstream end 3, an upstream edge near 2 wider than the downstream edge, and an arcuate portion connecting the upstream and downstream edges.

Claim 28 is rejected under 35 U.S.C. 102(b) as being anticipated by Child. The patent to Child discloses the a baffle for mixing where the use of such in a mixing dome housing is merely intended use, comprising a leading downstream edge seen in figure 4 having an edge tapering into the housing 27 on the downstream end 32A, an upstream edge near 59 wider than the downstream edge, and an arcuate portion connecting the upstream and downstream edges.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Child or Holzhuter. The patents to Child or Holzhuter disclose all of the recited structure with the

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exception of forming the baffle with a surface area that is about one half the cross sectional area of the housing, and forming the baffle in a paisley shape. It is considered an obvious choice of mechanical design to form the baffle of any shape as such is merely a choice of mechanical design and it would have been obvious to one skilled in the art to modify the baffles in Child and Holzhter to be of any shape as such would only routine experimentation to change the shape to change the flow profile to meet the needs of the user as such is merely a change in mechanical design requiring only routine experimentation.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Palm. The patent to Palm discloses all of the recited structure with the exception of having the baffle run 210 degrees from upstream to downstream edges, however such is considered a mere choice of mechanical expedients. It would have been obvious to one skilled in the art to modify the baffle in Palm to run 210 degrees from upstream to downstream edge as such would only require routine experimentation by one skilled in the art to arrive at optimum working values and such would provide for more mixing if the baffle were turned more.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Erbes, Schuster, Kennedy, Hackett, Sakamoto, Tauscher, King, Jansen, Ta, Levin, Koch, and Maurice disclosing state of the art baffles.

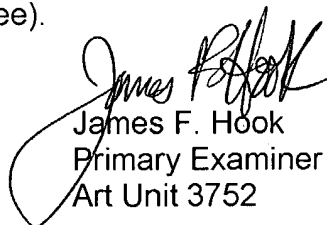
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-

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2913. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James F. Hook
Primary Examiner
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JFH